Supreme Court, U.S.
FILED

(1) No. 98 47 JUL 2 = 1998

OFFICE OF THE CLERK

In The

Supreme Court of the United States

October Term, 1997

WILLIAM DOYLE WOOD,

Petitioner

v.

CITY COUNCIL OF MANASSAS, VIRGINIA,

and

THE BOARD OF SUPERVISORS OF PRINCE WILLIAM COUNTY,

and

MANASSAS REGIONAL AIRPORT ADMINISTRATION BOARD

On Petition For Writ Of Certiorari
To The Supreme Court of Virginia

PETITION FOR WRIT OF CERTIORARI

NORBORNE P. BEVILLE, JR.
Counsel of Record
9305 GRANT AVENUE
MANASSAS, VIRGINIA 20110
(703) 631-3259

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QUESTIONS PRESENTED FOR REVIEW

1) May the trial court make a finding of fact without hearing evidence that alleged acts of nuisance, trespass, and inverse condemnation constituting a conspiracy and a physical invasion of property in violation of Amendments V and XIV of the Constitution of the United States of America, are preliminary activities involving planning in order to sustain a demurrer and to dismiss this case with prejudice, denying the petitioner a trial and any opportunity to present evidence in violation of Amendments V and XIV of the Constitution of the United States of America?

2) May the trial court dismiss the petitioner's case for failure to give notice of an "account" pursuant to Code of Virginia – Section 15.1-550 prior to filing for claims of a proprietary nature alleging nuisance, trespass, and inverse condemnation in violation of Amendments V and XIV of the Constitution of the United States of America and dismiss the matter with prejudice and without leave to amend or the opportunity comply with procedural requirements, denying the plaintiff a trial or any adjudication of his rights in violation of Amendments V and XIV of the Constitution of the United States of America?

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Williamson County Regional Planning Commission v. *Hamilton Bank*, 473 U.S. 172, 105 S. Ct. 3108, 87 L. Ed 2d 126 (1985) — 8, 9

CITATION OF REPORTS

There are no official or unofficial reports of the orders entered in this case. Copies of the Orders of the Circuit Court of Prince William County, Virginia and the Supreme Court of Virginia are attached in the Appendix.

BASIS OF JURISDICTION

This Court has jurisdiction of this appeal pursuant to § 28 U.S.C 1257 based upon the dismissal of the case without a hearing denying the petitioner's rights under Amendments V and XIV of the Constitution of the United States of America on September 5, 1997 and the refusal of the Petition for Appeal by the Supreme Court of Virginia on April 3, 1998.

APPLICABLE CONSTITUTIONAL PROVISIONS AND STATUTES

CONSTITUTION OF THE UNITED STATES OF AMERICA AMENDMENT V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor

shall any person be subject for the same offense to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

AMENDMENT XIV
Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of laws.

CODE OF VIRGINIA SECTION 15.1-550

§ 15.1-550. No account shall be allowed by the board of supervisors unless the same shall be made out in separate items and the nature of each item specifically stated, and, when no specific fees are allowed by law, the time actually and necessarily devoted to the performance of any service charged in such account shall be verified by affidavit, to be filed therewith. The attorney for the Commonwealth, or the county attorney in those counties which have

created the offfice of county attorney, shall represent the county before the board and shall advise the board of any claim which in his opinion is illegal or not before the board in proper form, and upon proper proof, or which for any other reason ought not to be allowed. When any claim has been allowed by the board against the county which in the opinion of such attorney, or any six freeholders of the county is improper as to form or proof or illegal, he shall seek the advice of the Attorney General as to legality or the State Auditor of Public Accounts as to matters of accounting, or such freeholders may appeal the decision of the board to the circuit court of the county. If either the Attorney General or the State Auditor of Public Accounts is of the opinion the claim is illegal or in improper form, the attorney for the Commonwealth shall appeal from the decision of the board to the circuit court of the county. In any event of any such appeal, the moving party shall cause a written notice thereof to be served on the clerk of the board and the party in whose favor the claim is allowed within thirty days after the making of such decision. If the court finds and states in its order that the claim was improperly allowed but that the consideration received or to be received by the county for payments made or to be made was or will be for value, it shall dismiss the appeal. If the court finds otherwise, it shall remand the claim to the board of supervisors for appropriate action. Whenever any claim allowed by the board is declared illegal by a court of competent

juridiction, the attorney for the Commonwealth, or the county attorney in those counties which have created the office of county attorney, in the name of the county, shall institute proper proceedings in the circuit court of his count within two years for the entry of the order allowing the same, if such amount has already been paid. The attorney for the Commonwealth, or the county attorney in those counties which have created the office of county attorney, shall be available to the board and hive his legal opinion when requested. (Code 1950, § 15.-257; 1962, c. 623; 1968, c. 450; 1980, c. 58;1982, c. 173; 1984, c. 617.)

CODE OF VIRGINIA SECTION 15.1-554

§ 15.1-554. No action shall be maintained by any person against a county upon any claim or demand until such person shall have first presented his claim the board of supervisors of such county for allowance, unless the governing body of the county has entered into a binding arbitration agreement or there is a provision in a written contract with the county to submit to arbitration any controversy thereafter arising. When there exists such a provision in a contract or there is a written agreement to arbitrate, the provisions of the Uniform Arbitration Act, Article 2 (§ 8.01-581.01 et seq.) of Chapter 21 of Title 8.01, shall apply. (Code 1950, § 15-261; 1962, c. 623; 1987, c. 483.)

STATEMENT OF THE CASE

The plaintiff, William Doyle Wood, alleged takings by conspiracy, nuisance, trespass, inverse condemnation, and physical invasion of his property by the City Council of Manassas, Virginia, the Board of Supervisors of Prince William County, Virginia, and the Manassas Regional Airport Administration Board by reason of the creation of a runway protection zone for and low level overflights of his abutting property into and out of the Manassas Regional Airport and other related activities constituting an all use taking of his property in violation of Amendments V and XIV of the Constitution of the United States of America.

At the hearing on the Demurrers and Pleas in Bar filed by the defendants the Circuit Court of Prince William County, Virginia ruled that Wood's noncompliance with the notice provisions of Section 15.1-550 of the Code of Virginia required dismissal with prejudice as to the Board of Supervisors of Prince William County, Virginia and made a finding of fact that the actions of the City Council of Manassas, Virginia and the Manassas Regional Airport Administration Board were preliminary activities which required dismissal with prejudice of the action as to them. The petitioner contended on appeal that these rulings deprived him of his property

without due process of law citing *First English Evangelical Lutheran Church* v. *Los Angeles* 482 U.S. 304, 107 S. Ct. 2378, 96 L. Ed 2d 2500 (1987).

The Supreme Court of Virginia ruled on April 3, 1998 that there was no reversible error in the judgment complained of.

ARGUMENT FOR ALLOWANCE OF A WRIT OF CERTIORARI

In his pleading filed in the Circuit Court of Prince William County, Virginia, Wood has alleged causes of actions for conspiracy, inverse condemnation, nuisance, and trespass. The facts alleged are summarized as follows: a conspiracy under color of state and local laws to harm him in his trade or profession; the identification and designation of noise overlay areas, which admitted the existence of sound nuisances; the formulation of an application to the FAA of noise exposure maps; the encouragement of increased business on the Airport: the creation of an RPZ. Runway Protection Zone; the expansion of the LDN 65 area in which the noise reached 65 decibels or more in a twenty-four hour period; the encouragement by the City and County of limited residential building in the County near the Airport; studies which eventually led to the acts complained of therein and the eventual deprivation of Wood's vested property rights;

appraisals of the Wood property and other properties; and introduction of helicopter traffic.

The trial court accepted evidence in the form of an affidavit as to the ownership and operation of the airport but based its ruling on the fact that the acts complained of were "preliminary activities."

This decision apparently arises from the holding of the U.S. Supreme Court in *Danforth v. United States*, 308 U.S. 271, 60 S.Ct. 231 84 L. Ed 240 (1939) involving the enactment of flood control legislation and *Agins v. Tiburon*, 447 U.S. 255, 100 S. Ct. 2138, 65. L. ED. 2d 106 (1980) involving enactment of zoning ordinances. While both of these were deemed not to be takings, this doctrine appears to have been severely eroded if not overruled by the holding in *First English Evangelical Lutheran Church v. Los Angeles*, 482 U.S. 304, 107 S. Ct. 2378, 96 L. Ed 2d 250 (1987).

The petitioner contends that the apparent judicial notice taken by the trial court as to the facts alleged being "preliminary activities" is obvious error and contravenes the holding of the Supreme Court of the United States of America in *First English Evangelical Lutheran Church v. Los Angeles*, 482 U.S. 304, 107 S. Ct. 2378, 96 L. Ed 2d 250 (1987). This case held clearly that any taking which denies a landowner all use of his property requires compensation under the Constitution of the United States of America.

The trial court in this case ruled without hearing any evidence that all activities by the defendants were "preliminary activities" and required dismissal. No authority was cited for this and Wood contends that none exists. Logically all activities are preliminary to something else and at this point Wood has alleged a taking of all uses of his property sufficient to meet the test of *Lucas v. South Carolina Costal Council*, 505 U.S. 1003, 112 S. Ct. 2886, 120 L. Ed 2d 798 (1992) that required compensation where the activities complained of deprived him of all economically viable use of his property and therefore effected a taking.

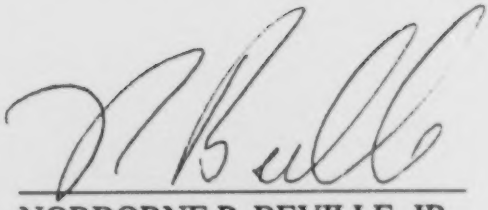
The trial court further dismissed the action as to the Board of Supervisors of Prince William County, Virginia for failure to give notice to the Board as required by Code of Virginia Sections 15.1-550 and 15.1-554. This dismissal was with prejudice and without leave to amend and effectively denied Wood any option to give notice and refile, thus denying his right to be heard in violation of Amendments V and XIV of the Constitution of the United States of America.

The ruling assumes that the petitioner had an "account" with the Board but also required him to submit a claim to the very party whose actions he was complaining of. Although the case of *Williamson County Regional Planning Commission v. Hamilton Bank*, 473 U.S. 172, 105 S. Ct. 3108, 87L. Ed 2d 126 (1985) requires exhaustion of state remedies, the trial court's dismissal of the matter

with prejudice and without leave to amend or refile clearly constitutes a final decision and allows the petitioner to appeal as held in this case.

Petitioner William Doyle Wood has alleged in his initial pleading a deprivation of all use of his property and a taking requiring compensation under Amendments V and XIV of the Constitution of the United States of America. By its ruling sustained by the Supreme Court of Virginia that these were preliminary activities the trial court denied the landowner Wood compensation and even the right to present evidence. This Court should declare such actions in violation of the Constitution of the United States of America and the case should be remanded for further proceedings.

RESPECTFULLY SUBMITTED
William Doyle Wood
By Counsel



NORBORNE P. BEVILLE, JR.
Counsel for Petitioner
9305 Grant Avenue
Manassas, VA 20110
(703) 361-7156

APPENDIX

A2. Order Circuit Court of Prince William County, Virginia September 5, 1997

A8. Order Supreme Court of Virginia April 3, 1998

VIRGINIA:

IN THE CIRCUIT COURT FOR PRINCE WILLIAM COUNTY

WILLIAM DOYLE WOOD,	)	
	)	
Plantiff,	)	
	)	
v.	)	LA: 43132
	)	
CITY COUNCIL OF MANASSAS, VIRGINIA et al.,	)	
	)	
Defendants,	)	
	)	

ORDER

THIS CAUSE, came to be heard on the Plea In Bar and Demurrer of the City Council of Manassas, Virginia and Manassas Regional Airport Administration Board as well as the Plea In Bar and Demurrer of the County of Prince William. For the reasons stated from the bench on August 15, 1997, it appears that the Demurrer of Prince William County should be granted because the plaintiff did not comply with the requirements of Sections 15.1-550 through 15.1-554, *Code of Virginia*, for plaintiff's monetary claims for compensation based on inverse condemnation, nuisance and trespass,

and the Demurrer of the City Council of Manassas, Virginia and the Manassas Regional Airport Administration Board should be granted because the only activity engaged in by these defendants was preliminary activity which was not actionable by William Doyle Wood. Accordingly,

IT IS ORDERED, that the Motion for Judgment, Petition In Inverse Condemnation And For Declaratory Judgment of William Doyle Wood should be dismissed with prejudice and without leave to amend.

THIS IS A FINAL ORDER.

ENTERED this 5th day of September, 1997.

BK0157PG1021

"s/Herman A. Whisenant"
Herman A. Whisenant, Jr., Judge

WE ASK FOR THIS:

"s/J W Boykin"
Jerry William Boykin (VSB #15056)
Redmon, Boykin & Braswell, LLP
510 King St., Suite 301
Alexandria, VA 22314

Counsel for Defendants
CITY COUNCIL OF MANASSAS, VIRGINIA
& MANASSAS REGIONAL AIRPORT ADMINSTRATION BOARD

"s/Robert B. Dickerson"
Robert B. Dickerson, Asst. County Attorney
Office of Prince William County Attorney
1 County Complex Court
Prince William, VA 22192

Counsel for Defendant
PRINCE WILLIAM COUNTY

BK0157PG1022

SEEN AND OBJECTED TO AND EXCEPTIONS NOTED:

"s/N. Beville"
Norborne P. Beville, Jr., Esq.
9305 Grant Ave.
Manassas, VA 20110-5064

Counsel for Plaintiff
WILLIAM DOYLE WOOD

VIRGINIA:

IN THE CIRCUIT COURT FOR PRINCE WILLIAM COUNTY

WILLIAM DOYLE WOOD,

Plaintiff,

v. Law No. 43132

CITY COUNCIL OF MANASSAS, VIRGINIA, et al

Defendants.

EXCEPTION

The plaintiff, William Doyle Wood by counsel, excepts to the Court's ruling of August 15, 1997, upon the following grounds.

1. The Court dismissed this matter as to the City Council and the Airport Board upon the basis that plaintiff's Motion for Judgment alleges preliminary activities about the planning for the taking of the land and the runway.

The effect of this ruling appears to be that only an actual physical occupation of ground itself would be compensable and that these alleged actions are not compensable.

Counsel for the City and Board cited the case of *First English Evangelical Lutheran Church v. Los Angels 482 U.S. 304, 107 S.Ct. 2378, 46 L.Ed 2d 250 (1987)*. Plaintiff reads this case to support the proposition that even a temporary taking which denies him of all use of

his property is compensable. This case discusses preliminary activities only in the cases of *Danforth v. United States 308 U.S. 271, 60 S. Ct 231 84 L Ed. 240 (1939)*, which held that enactment of flood control legislation was not a taking and *Agins v. Tiburon 447 US 255, 100 S.Ct 2138, 65 L Ed. 2d 106 (1980)*, which involved enactment of zoning ordinances and was deemed not a taking.

At this point there is no allegation or evidence that the activities of defendants including violation of federal regulations were preliminary to anything and plaintiff excepts to the Court's ruling in this regard.

2. The Court dismissed the action against the County for failure to comply with §15.1-550 and thereafter while the plaintiff has presented argument as to that and again notes his exceptions, he also contends that the dismissal cannot be with prejudice. The County cites *Parker v. Prince William County, 198 Va. 231, 935 E 2d 136 (1956)* for the proposition that compliance with these statutes is jurisdictional. The Court having ruled that it has no jurisdiction as to the County, the matter cannot be dismissed with prejudice solely upon that basis.

WILLIAM D. WOOD
By Counsel

"s/N Beville"
NORBORNE P. BEVILLE, JR.
Attorney At Law
9305 Grant Avenue
Manassas, Virginia 20110-5064
(703) 361-7156
Counsel for Plaintiff

CERTIFICATE

I hereby certify that a true copy of the foregoing Exception was mailed to the City Council of Manassas and Manassas Regional Airport Administration Board, c/o Jerry W. Boykin, Redmon, Boykin & Braswell, 510 King Street, Suite 301, Alexandria, Virginia 22314, and The Board of Supervisors of Prince William County, c/o Robert B. Dickerson, Assistant County Attorney, 1 County Complex Court, Prince William, Virginia 22192-9201, this 29th day of August, 1997.

"s/N Beville"
Norborne P. Beville, Jr.

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday *the* 3rd *day of* April, 1998.

William Doyle Wood, Appellant,

against Record No. 972489
Circuit Court No. 43132

City Council of Manassas, et al., Appellees,

From the Circuit Court of Prince William County

Upon review of the record in this case and consideration of the argument submitted in support of and in opposition to the granting of an appeal, the Court is of opinion there is no reversible error in the judgment complained of. Accordingly, the Court refuses the petition for appeal.

A Copy,

Teste:

David B. Beach, Clerk

By: "s/ Wendy L. Tuck"

Deputy Clerk